have specific performance if there was originally, between the first parties, mutuality of remedy; and if the assignor was available for suit when the bill was brought. *Cf. Murphy* v. *Marland*, 62 Mass. 575; *Lenman* v. *Jones*, 222 U. S. 51. See FRY, *op. cit.* § 222. Early New York decisions recognized the right of an assignee to specific performance. *Miller* v. *Bear*, 3 Paige Ch. (N. Y.) 465; *Dodge* v. *Miller*, 81 Hun. 102, 30 N. Y. Supp. 726. Recent rulings of the Appellate Division cast doubt on the right. *Genevetz* v. *Feiering*, 136 App. Div. 736, 121 N. Y. Supp. 392; *Dittenfass* v. *Horsley*, 177 App. Div. 143, 163 N. Y. Supp. 626. See *Schuyler* v. *Kirk-Brown Realty Co.*, 193 App. Div. 269, 270–272. See also Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 929, 955. The present decision dispels this doubt. In discarding Fry's and Pomeroy's tests, the New York court adds its weight to that of a growing line of authorities which are making the doctrine of mutuality achieve justice by looking to the substance, instead of defeat justice by sticking in the form of an absolute rule. *Jones & Sons, Ltd.* v. *Tankerville*, [1909] 2 Ch. 440; *Peterson* v. *Chase*, 115 Wis. 239, 91 N. W. 687; *Wright* v. *Suydam*, 72 Wash. 587, 131 Pac. 239. See *Javierre* v. *Central Altagracia*, 217 U. S. 502, 508.

WILLS — LEGACIES AND DEVISES — LAPSED SHARE OF RESIDUE. — Two nieces of the testator, who were named among the seven residuary legatees, predeceased him without issue. Action was brought to determine whether their share of the residue passed to the other residuary legatees or to the next of kin. *Held*, that it fell back into the residue. *Corbett* v. *Skaggs*, 207 Pac. 819 (Kan.).

It has been a long established and universally followed rule that a lapsed or revoked general share of a residuary legatee passes according to the law of intestacy. See 2 ALEXANDER, WILLS, § 764. The reason assigned is usually that that which is already a part of the residue cannot fall back into the residue. *Lyman* v. *Coolidge*, 176 Mass. 7, 56 N. E. 831. It has also been said that the residuary legatees being individuals and not members of a class, take as tenants in common rather than as joint tenants. *Bagwell* v. *Dry*, 1 P. Wms. 700. The rule was formerly applied regardless of the testator's intentions. *Humble* v. *Shore*, 7 Hare 247; *Gorgas' Estate*, 166 Pa. St. 269, 31 Atl. 86. *Cf. Lloyd* v. *Lloyd*, 4 Beav. 231. This is no longer the law of England. *In re Palmer* [1893] 3 Ch. 369. In America a manifest intent will usually take the case out of the rule. *Jackson* v. *Roberts*, 14 Gray (Mass.), 546. Even where there is no expressed intent, because of its tendency to defeat the purpose to die testate, the courts desperately strain to escape the rule. *Waln's Estate*, 156 Pa. St. 194, 23 Atl. 205; *In re Dunster* [1909] 1 Ch. 103; *Aitkin* v. *Sharp*, 115 Atl. 912 (N. J.). The presence of a gift over to the residuary legatee, if only one of four survived, took the case out of the rule although three of the four survived. *In re Radcliffe*, 51 W. R. 409. A statute declaring that realty devised to several be taken in common was held to imply that a joint tenancy existed in personal property. *In re Gamble*, 13 Ont. L. Rep. 299. The rule has been abrogated by statute in three jurisdictions. See 1910 OHIO ANN. GEN. CODE, § 10581 (if legatee be a relative); 1909 R. I. GEN. LAWS, ch. 254, § 7; *Woodward* v. *Congdon*, 34 R. I. 316, 83 Atl. 266; 1920 PA. STAT. § 8325; *Re Jackson*, 28 Pa. Dist. R. 943. One state by decision has rejected the rule. *West* v. *West*, 89 Ind. 529. It is encouraging to find the Kansas court following the progressive minority in a case of first impression.